

**FILED**

MAR 2 2013

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

**FILED**

APR 2 2013

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NORTHERN DISTRICT OF CALIFORNIA

STUART F. DELERY  
Principal Deputy Assistant Attorney General

MELINDA HAAG (CSBN 132612)  
United States Attorney  
ALEX G. TSE (CSBN 152348)  
Chief, Civil Division  
ERICA BLACHMAN HITCHINGS (MABN 669825)  
Special Assistant United States Attorney  
450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102  
Telephone: (415) 436-7015  
Facsimile: (415) 436-6927  
[erica.hitchings@usdoj.gov](mailto:erica.hitchings@usdoj.gov)

MICHAEL D. GRANSTON  
SARA McLEAN  
KIMBERLY I. FRIDAY  
Attorneys  
Civil Division  
United States Department of Justice  
P.O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 305-4207

Attorneys for the United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO HEADQUARTERS

UNITED STATES OF AMERICA *ex rel.* PROTRANSPORT-1, LLC  
and STATE OF CALIFORNIA *ex rel.*,  
PROTRANSPORT-1, LLC  
and PROTRANSPORT-1, LLC, a  
limited liability company, in its  
individual capacity,

Plaintiffs,

v.

KAISER FOUNDATION HEALTH  
PLAN, INC., a corporation

Defendant.

Case No. C 12-3896 LB

UNITED STATES' AND STATE OF  
CALIFORNIA'S NOTICE OF ELECTION  
TO DECLINE INTERVENTION;  
[PROPOSED] ORDER TO UNSEAL  
AMENDED

FILED UNDER SEAL

JOINT NOTICE TO DECLINE INTERVENTION

**A. The United States**

Pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994).

Therefore, the United States requests that, should either the relators or the defendants propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States; the United States also requests that orders issued by the Court be sent to counsel for the United States. The United States reserves its right to order any deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of the relator’s action or claim. The United States also requests that it be served with all notices of appeal.

**B. The State of California**

The State of California (“California”) hereby notifies the Court that California declines to proceed with the above referenced civil action alleging violations by Kaiser Foundation Health Plan of the California False Claims Act and related causes of action. Cal. Gov’t Code § 12652(c)(6)(B). If California’s interests fail to be adequately represented by the relator plaintiff, California reserves its right to file an application to intervene in this action. Cal.

Gov't Code § 12652(f)(2)(A). If the parties attempt to dismiss, settle, or otherwise discontinue the action, California requests that the Court provide California with notice and an opportunity to be heard prior to the Court's ruling or granting of its approval. Cal. Gov't Code §§ 12652(c)(1). Additionally, California reserves its right to request copies of all pleadings filed with the court and copies of all deposition transcripts taken in this case. Cal. Gov't Code § 12652(f)(1).

### C. Unsealing Request

Finally, the United States and California request that the Court unseal: (1) Relator's Complaint; (2) the summons; (3) the scheduling order; (4) this Notice of Election to Decline Intervention, with (Proposed) Order to Unseal; and (5) all other matters occurring in this action after the date the Court enters the unsealing order. The United States and California request that all other contents of the Court's file in this matter (including, but not limited to, any applications filed by the United States and/or California for extensions of the sixty-day investigative period, any applications for partial lifting of the seal, and any orders previously entered in this matter) remain under seal and not be made public or served upon Defendant.

Respectfully submitted,

STUART F. DELERY  
Principal Deputy Assistant Attorney General

MELINDA HAAG  
United States Attorney


Dated: March 22, 2013

By:

  
ERICA BLACHMAN HITCHINGS  
Special Assistant United States Attorney

Dated: March 21, 2013

By:

  
MICHAEL D. GRANSTON  
SARA McLEAN  
KIMBERLY I. FRIDAY  
Civil Division, U.S. Department of Justice

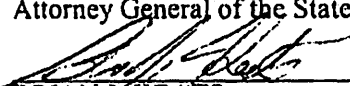
Attorneys for the United States of America

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Dated: March 20 2013

By:

KAMALA HARRIS  
Attorney General of the State of California

  
BRIAN J. KEATS  
Deputy Attorney General  
Attorneys for the State of California



~~PROPOSED~~ ORDER

The United States and the State of California having declined to intervene in this action pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), and the California False Claims Act, Cal. Gov't. Code § 12652(c)(6)(B), respectively, the Court rules as follows:

IT IS HEREBY ORDERED that,

1. All current contents of the Court's file in this action shall remain under seal and not be made public or served upon the defendants, except for (1) Relator's Complaint; (2) the summons; (3) the scheduling order; and (4) this Notice of Election to Decline Intervention, with (Proposed) Order to Unseal, which are hereby unsealed.

2. The relator shall serve the Complaint upon the defendant.

3. The relator shall serve this Order and the accompanying Joint Notice of Election to Decline Intervention upon the defendant after service of the Complaint.

4. The seal shall be lifted as to all other matters occurring in this action after the date of this Order.

5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3), and upon California. The United States and California may order any deposition transcripts and are entitled to intervene in this action, for good cause, at any time.

6. The parties shall serve all notices of appeal upon the United States and California.

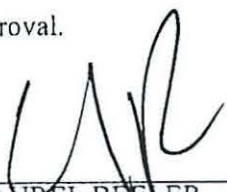
7. All orders of this Court shall be sent to the United States and California.

8. Should the relator or the defendant(s) propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States and California with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated:                     

APR 2 2013  
MAR 2 2013 *sl*

  
LAUREL BEELER  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**UNITED STATES' AND STATE OF CALIFORNIA'S NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED] ORDER TO UNSEAL**

to be served this date upon the persons indicated below at the addresses shown:

Brian J. Keats, Esq  
Bureau of Medi-Cal Fraud and Elder Abuse, DOJ  
1425 River Park Drive, Suite 300  
Sacramento, CA 95815

George S. Azadian, Esq.  
2596 Mission Street, Suite 204  
San Marino, CA 91108

☒

**BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐

**CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐

**BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be delivered by hand to the person or offices of each addressee above.

☐

**BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to the person or offices of each addressee above.


☐

**BY E-MAIL:** I caused each such document to be sent by e-mail to the person or offices of each address above.

☐

**BY FEDERAL EXPRESS**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 21, 2013 at San Francisco, California.

  
Jessica Meegan  
Legal Assistant

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN,  
INC.,

Defendant.

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Case Number: CV12-03896 LB

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.


That on April 2, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Erica Blachman Hitchings  
Special Assistant United States Attorney  
450 Golden Gate Avenue, Box 36055  
San Francisco, CA 94102

Michael D. Granston  
Sara McLean  
Kimberly I. Friday  
Attorneys - Civil Division  
United States Department of Justice  
P.O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044

**(Counsel directed to serve the appropriate parties.)**

Dated: April 2, 2013

  
Richard W. Wieking, Clerk  
By: Lashanda Scott, Deputy Clerk